

UNITED STATES OF AMERICA
Before the
OFFICE OF THRIFT SUPERVISION

In the Matter of)	
)	Order No.: CN 10-09
)	
BANK 360)	
)	Effective Date: March 17, 2010
Beresford, South Dakota)	
OTS Docket No. 05919)	

ORDER TO CEASE AND DESIST

WHEREAS, Bank 360, Beresford, South Dakota, OTS Docket No. 05919 (Association), by and through its Board of Directors (Board), has executed a Stipulation and Consent to Issuance of an Order to Cease and Desist (Stipulation); and

WHEREAS, the Association, by executing the Stipulation, has consented and agreed to the issuance of this Order to Cease and Desist (Order) by the Office of Thrift Supervision (OTS) pursuant to 12 U.S.C. § 1818(b); and

WHEREAS, pursuant to delegated authority, the OTS Regional Director for the Central Region (Regional Director) is authorized to issue Orders to Cease and Desist where a savings association has consented to the issuance of an order.

NOW, THEREFORE, IT IS ORDERED that:

Cease and Desist.

1. The Association and its directors, officers, and employees shall cease and desist from any action (alone or with others) for or toward causing, bringing about, participating in or

counseling, or the aiding and abetting of all unsafe or unsound practices and violations of laws or regulations related to Currency and Foreign Transactions Reporting Act, as amended by the USA Patriot Act and other laws (Bank Secrecy Act or BSA), 31 U.S.C. §§ 5311 et seq., and the related regulations issued and/or administered by FinCEN, 31 C.F.R. §§ 103.11 et seq., and the related BSA regulations issued by the OTS, 12 C.F.R. § 563.177 (collectively, BSA Laws and Regulations) as described in the OTS Report of Examination of the Association dated August 24, 2009 (2009 ROE).

Bank Secrecy Act.

2. (a) During the life of this Order, the Association shall have and retain a BSA Officer who is qualified and responsible for the implementation, coordination and monitoring of the Association's day to day compliance with the BSA Laws and Regulations. The BSA Officer shall have the authority to recommend and enforce a written BSA Compliance Program to ensure Association compliance with the BSA Laws and Regulations.
- (b) During the life of this Order, the Association shall notify the Regional Director in writing of any changes in the Association's BSA Officer.
- (c) Within forty-five (45) days, the Association shall submit to the Regional Director a copy of the Association's request to FinCEN for any information sharing requests from FinCEN issued under section 314(a) of the USA Patriot Act that the Association may have failed to perform during the timeframe that it operated without a BSA Officer or a designated 314(a) point-of-contact. Within thirty (30) days of receipt of a response from FinCEN, the Association shall notify the OTS of FinCEN's findings.
3. (a) Within sixty (60) days, the Board shall submit to the Regional Director for written non-objection the name, qualifications, and terms of engagement of an independent third

party consultant (Consultant) to conduct a review of the Association's BSA Compliance Program as outlined in Subparagraph (b) below.

(b) Within one hundred twenty (120) days of receipt of the written non-objection of the Regional Director to the Consultant, the Consultant shall complete a comprehensive test of the Association's BSA Compliance Program to ensure proper controls are in place to comply with the BSA Laws and Regulations, SAR Regulations, and OFAC Regulations. Prior to performing the test, the Consultant shall review any deficiencies, violations or criticisms of the Association's compliance with such regulations cited by the OTS in the ROE.

Compliance Self-Assessment.

4. (a) Within sixty (60) days, the Association shall submit to the Board and Regional Director the written findings of a self-assessment of the Association's compliance with all applicable consumer and other compliance laws and regulations (Compliance Laws and Regulations)¹ that is appropriate for the Association's size, complexity, product lines and business operations (Compliance Self-Assessment).

(b) Within ninety (90) days, the Association shall submit to the Board and Regional Director the schedule of periodic compliance reviews to be conducted by the Association based on the findings of the Compliance Self-Assessment

Information Technology.

5. Within one hundred twenty (120) days, the Association shall develop a pandemic plan, test the Association's disaster recovery plan, and correct the nineteen (19) deficiencies identified in the 2009 information technology audit report.

¹ The term "consumer and other compliance laws and regulations" means all laws and regulations identified, referenced or discussed in Section 1100 (Compliance Oversight Examination Program) of the OTS Examination Handbook.

Senior Executive Officer Assessment.

6. Within ninety (90) days, the Board shall complete an assessment of the current Senior Executive Officers² of the Association and submit to the Regional Director a written report containing the findings and recommendations of the Board. At a minimum, the report shall contain:

- (a) objectives by which Senior Executive Officer's effectiveness will be measured;
- (b) a Senior Executive Officer succession plan for the Association; and
- (c) an assessment of whether the Board and its committees are receiving adequate information on the operation of the Association to enable them to fulfill their fiduciary responsibilities and other responsibilities under law.

Exception Tracking Policy.

7. (a) Within thirty (30) days, the Association shall develop written policies and procedures to ensure that it effectively addresses in a timely manner adverse findings contained in compliance reviews, information technology audits, loan reviews, internal and external audits, and OTS examinations (Exception Tracking Policy). The Exception Tracking Policy shall provide for the establishment of a tracking system, development of measures to prevent recurrence, and generation of written status reports to the Board on a quarterly basis (Exception Tracking Report) to identify, monitor and measure the Association's remediation of and recurrence prevention plans for all compliance or loan criticisms, audit findings, and OTS examination Matters Requiring Board Attention (MRBAs).

² The term "Senior Executive Officer" is defined at 12 C.F.R. § 563.555.

(b) Within forty-five (45) days after the end of each quarter, starting with the quarter ending on March 31, 2010, the Association shall submit the Exception Tracking Report to the Board and the Regional Director. The Board's consideration of the Exception Tracking Report for the period, including comments and questions concerning the report and additional actions taken or directed by the Board, shall be reflected in the minutes of the Board's meetings.

(c) Within forty-five (45) days, all MRBAs from the OTS Report of Examination dated March 31, 2008 repeated in the 2009 ROE shall be effectively addressed, including enhancement of the Association's asset classification policy, Board review of the High Loan-To-Value Reports and Concentration Reports, and corrective measures for the Credit Documentation and Administration Plan.

Concentrations of Assets and Liabilities.

8. Within sixty (60) days, the Association shall submit a revised written program for identifying, monitoring, and managing risks associated with concentrations of assets and liabilities (Concentration Program) that is acceptable to the Regional Director. At a minimum, the Concentration Program shall:

- (a) address all recommended corrective actions set forth in the ROE relating to concentrations of assets and liabilities;
- (b) establish comprehensive and reasonable concentration limits expressed as a percentage of core capital plus Allowances for Loan and Lease Losses (ALLL), and document the appropriateness of such limits; and
- (c) require periodic stress testing of commercial loan portfolios by assessing the impact of changing economic scenarios on asset quality, earnings, and capital.

Compliance Committee and Progress Reports.

9. (a) Within thirty (30) days, the Board shall appoint a committee of three (3) independent³ directors to monitor and coordinate the Association's compliance with the Order (Compliance Committee). The Compliance Committee may be an existing Board Committee that meets the criteria of this provision.
- (b) Within forty-five (45) days of the end of each quarter, starting with the quarter ending on March 31, 2010, the Compliance Committee shall provide a written progress report to the Board, describing the actions taken by the Association to comply with each provision of this Order and the results of those actions. The Board's consideration of the Compliance Committee's progress report for the period, including comments and questions concerning the progress report and additional actions taken or directed by the Board, shall be reflected in the minutes of the Board's meetings.
- (c) Within forty-five (45) days of the end of each quarter, starting with the quarter ending on March 31, 2010, a copy of the progress report for the period shall be provided to the Regional Director.
- (d) Nothing in this Compliance Committee provision shall diminish the responsibility of the entire Board to ensure the Association's compliance with the Order.

Effective Date, Incorporation of Stipulation.

10. This Order is effective on the Effective Date as shown on the first page. The Stipulation is made a part hereof and is incorporated herein by this reference.

³ For this purpose the term "independent" means that the director: 1) is not an officer or employee of the Association or of an affiliate or service provider of the Association; 2) is not a member of the immediate family (defined in 12 C.F.R. 561.24) of another director, officer or employee of the Association or its affiliates; 3) is not a controlling person of the Association as defined in 12 C.F.R. 561.14; and 4) does not have outstanding extensions of credit from the Association.

Duration.

11. This Order shall remain in effect until terminated, modified or suspended, by written notice of such action by the OTS, acting by and through its authorized representatives.

12. The provisions of this Order shall be binding upon the Association, its directors, officers, employees, agents, successors, assigns, and other institution-affiliated parties of the Association.

Time Calculations.

13. Calculation of time limitations for compliance with the terms of this Order run from the Effective Date and shall be based on calendar days, unless otherwise noted. If the time calculation falls on a weekend day or national holiday, then the time limit will be the first business day following the weekend day or national holiday.

14. The Regional Director may extend any of the deadlines set forth in the provisions of this Order upon written request by the Association that includes reasons in support for any such extension. Any OTS extension shall be made in writing.

Submissions and Notices.

15. All submissions, including progress reports, to the OTS that are required by or contemplated by this Order shall be submitted within the specified timeframes.

16. Except as otherwise provided herein, all submissions, requests, communications, consents or other documents relating to this Order shall be in writing and sent by first class U.S. mail (or by reputable overnight carrier, electronic facsimile transmission or hand delivery by messenger) addressed as follows:

(a) **To the OTS:**

Regional Director
Office of Thrift Supervision
One South Wacker Drive, Suite 2000
Chicago, Illinois 60606
Facsimile: (312) 917-5001

(b) **To the Association:**

Chairman of the Board
Bank 360
101 South 3rd Street
Beresford, South Dakota 57004-2121
Facsimile: (605) 763-5105

No Violations Authorized.

17. Nothing in this Order or the Stipulation shall be construed as allowing the Association, its Board, officers or employees to violate any law, rule, or regulation.

IT IS SO ORDERED.

OFFICE OF THRIFT SUPERVISION

By: _____/s/
Daniel T. McKee
Regional Director, Central Region

Date: See Effective Date on page 1

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STIPULATION AND CONSENT TO ISSUANCE OF ORDER TO CEASE AND DESIST

WHEREAS, the Office of Thrift Supervision (OTS), acting by and through its Regional Director for the Central Region (Regional Director), and based upon information derived from the exercise of its regulatory and supervisory responsibilities, has informed **BANK 360**, Beresford, South Dakota, OTS Docket No. 05919 (Association) that the OTS is of the opinion that grounds exist to initiate an administrative proceeding against the Association pursuant to 12 U.S.C. § 1818(b);

WHEREAS, the Regional Director, pursuant to delegated authority, is authorized to issue Orders to Cease and Desist where a savings association has consented to the issuance of an order; and

WHEREAS, the Association desires to cooperate with the OTS to avoid the time and expense of such administrative cease and desist proceeding by entering into this Stipulation and Consent to the Issuance of Order to Cease and Desist (Stipulation) and, without admitting or denying that such grounds exist, but only admitting the statements and conclusions in Paragraphs

1 and 2 below concerning Jurisdiction, hereby stipulates and agrees to the following terms:

Jurisdiction.

1. The Association is a “savings association” within the meaning of 12 U.S.C. § 1813(b) and 12 U.S.C. § 1462(4). Accordingly, the Association is an “insured depository institution” as that term is defined in 12 U.S.C. § 1813(c).

2. Pursuant to 12 U.S.C. § 1813(q), the Director of the OTS is the “appropriate Federal banking agency” with jurisdiction to maintain an administrative enforcement proceeding against a savings association. Therefore, the Association is subject to the authority of the OTS to initiate and maintain an administrative cease and desist proceeding against it pursuant to 12 U.S.C. § 1818(b).

OTS Findings of Fact.

3. Based on a comprehensive examination of the Association, the OTS finds that the Association has engaged in unsafe or unsound banking practices and violations of laws or regulations related to the Currency and Foreign Transactions Reporting Act, as amended by the USA Patriot Act and other laws (Bank Secrecy Act or BSA), 31 U.S.C. §§ 5311 et seq., and the related regulations issued and/or administered by FinCEN, 31 C.F.R. §§ 103.11 et seq., and the related BSA regulations issued by the OTS, 12 C.F.R. § 563.177 (collectively, BSA Laws and Regulations) as described in the OTS Report of Examination of the Association dated August 24, 2009.

Consent.

4. The Association consents to the issuance by the OTS of the accompanying Order to Cease and Desist (Order). The Association further agrees to comply with the terms of the Order upon the Effective Date of the Order and stipulates that the Order complies with all requirements

of law.

Finality.

5. The Order is issued by the OTS under 12 U.S.C. § 1818(b). Upon the Effective Date, the Order shall be a final order, effective, and fully enforceable by the OTS under the provisions of 12 U.S.C. § 1818(i).

Waivers.

6. The Association waives the following:

- (a) the right to be served with a written notice of the OTS's charges against it as provided by 12 U.S.C. § 1818(b) and 12 C.F.R. Part 509;
- (b) the right to an administrative hearing of the OTS's charges as provided by 12 U.S.C. § 1818(b) and 12 C.F.R. Part 509;
- (c) the right to seek judicial review of the Order, including, without limitation, any such right provided by 12 U.S.C. § 1818(h), or otherwise to challenge the validity of the Order; and
- (d) any and all claims against the OTS, including its employees and agents, and any other governmental entity for the award of fees, costs, or expenses related to this OTS enforcement matter and/or the Order, whether arising under common law, federal statutes or otherwise.

OTS Authority Not Affected.

7. Nothing in this Stipulation or accompanying Order shall inhibit, estop, bar, or otherwise prevent the OTS from taking any other action affecting the Association if at any time the OTS deems it appropriate to do so to fulfill the responsibilities placed upon the OTS by law.

Other Governmental Actions Not Affected.

8. The Association acknowledges and agrees that its consent to the issuance of the Order is solely for the purpose of resolving the matters addressed herein, consistent with Paragraph 7 above, and does not otherwise release, discharge, compromise, settle, dismiss, resolve, or in any way affect any actions, charges against, or liability of the Association that arise pursuant to this action or otherwise, and that may be or have been brought by any governmental entity other than the OTS.

Miscellaneous.

9. The laws of the United States of America shall govern the construction and validity of this Stipulation and of the Order.

10. If any provision of this Stipulation and/or the Order is ruled to be invalid, illegal, or unenforceable by the decision of any Court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby, unless the Regional Director in his or her sole discretion determines otherwise.

11. All references to the OTS in this Stipulation and the Order shall also mean any of the OTS's predecessors, successors, and assigns.

12. The section and paragraph headings in this Stipulation and the Order are for convenience only and shall not affect the interpretation of this Stipulation or the Order.

13. The terms of this Stipulation and of the Order represent the final agreement of the parties with respect to the subject matters thereof, and constitute the sole agreement of the parties with respect to such subject matters.

14. The Stipulation and Order shall remain in effect until terminated, modified, or suspended in writing by the OTS, acting through its Regional Director or other authorized representative.

Signature of Directors/Board Resolution.

15. Each Director signing this Stipulation attests that he or she voted in favor of a Board Resolution authorizing the consent of the Association to the issuance of the Order and the execution of the Stipulation. This Stipulation may be executed in counterparts by the directors after approval of execution of the Stipulation at a duly called board meeting.

WHEREFORE, the Association, by its directors, executes this Stipulation.

Accepted by:

**BANK 360
Beresford, South Dakota**

Office of Thrift Supervision

By: _____/s/
Daniel T. McKee
Regional Director, Central Region

Date: See Effective Date on page 1

_____/s/
Charity Herrity, Director

_____/s/
Mark A. Jensen, Director

_____/s/
Dean R. Lindstrom, Director

_____/s/
Freeman Swanstrom, Director